



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

OCT 2 4 20 1997

October 2, 1997

SENSITIVE

Timothy Hardy
Hardy and Associates
4140 Shelbyville Road
Louisville, KY 40207-3217

RE: MUR 4012
Timothy Hardy

Dear Mr. Hardy:

As you were previously notified, based on the complaint and information supplied by you, the Commission, on July 18, 1995, found that there was reason to believe that you violated 2 U.S.C. § 441a(f), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that you violated 2 U.S.C. § 441b and that you knowingly and willfully violated 2 U.S.C. § 441a(f).

The Commission may or may not approve the General Counsel's recommendations. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe violations have occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

Celebrating the Commission's 20th Anniversary

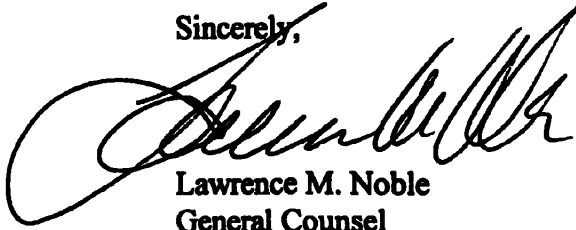
YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

28044203601

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence M. Noble", written over the typed name and title.

Lawrence M. Noble
General Counsel

Enclosure
Brief

28044203602

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Timothy Hardy

)
)
)
)

MUR 4012

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was initiated by a complaint submitted by Maureen Keenan. The complaint alleged that Frank G. Simon, M.D., the Freedom's Heritage Forum ("Forum") and Arthur Cerminara, as treasurer, reported certain expenditures as independent when, in fact, the expenditures qualified as contributions because of coordination between the Forum and the Hardy for Congress Committee ("Hardy Committee"). Based upon the information presented, the Commission found reason to believe that Timothy Hardy violated 2 U.S.C. § 441a(f), and conducted an investigation.

II. FACTUAL AND LEGAL ANALYSIS

A. COORDINATION ISSUE

1. Applicable Law

The Federal Election Campaign Act of 1971, as amended (the "Act") limits the amount that persons other than multicandidate committees may contribute to any candidate for federal office to \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). A "contribution" includes "any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A). Independent expenditures are not limited by the Act. See Buckley v. Valeo, 424 U.S. 1, 39 (1976). The Act defines an "independent expenditure" as one made "by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or

28044203603

consultation with any candidate," or the candidate's authorized committee or agent, and "which is not made in concert with, or at the request or suggestion of" any candidate or candidate's agent. 2 U.S.C. § 431(17).

The Commission's regulations define "made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate" to mean any "arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication." 11 C.F.R.

§ 109.1(b)(4)(i). There is a presumption that expenditures are coordinated if they are made when based on information about the candidate's "plans, projects, or needs" provided to the expending person by the candidate, or by the candidate's agent(s), with a view toward having an expenditure made. 11 C.F.R. § 109.1(b)(4)(i)(A). An expenditure which does not qualify under 11 C.F.R. § 109.1 as an "independent expenditure shall be a contribution in-kind to the candidate and an expenditure by the candidate, unless otherwise exempted." 11 C.F.R.

§ 109.1(c).

On a number of occasions, the Commission has considered the nature and purposes of an event sponsored by a group and involving the active participation of a candidate for Federal office to determine if the event results in a contribution or expenditure on behalf of the candidate. The Commission has found that a contribution or expenditure would result if the event involves: (1) the solicitation, making or acceptance of contributions to the candidate's campaign, or (2) communications expressly advocating the nomination, election or defeat of any candidate. AO 1996-11; AO 1992-5; AO 1988-22. In Advisory Opinion 1988-22, the Commission stated that the active participation by candidates for Federal office as featured speakers at luncheons

28044203604

sponsored by an organization would involve coordination with the candidate in the providing to and receipt of a benefit for the candidate.

The Act addresses violations of law that are knowing and willful. See 2 U.S.C. § 437g(a)(5)(b). The knowing and willful standard requires knowledge that one is violating the law. Federal Election Commission v. John A. Dramesi for Congress Committee, 640 F. Supp. 985 (D.N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." United States v. Hopkins, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions. Id. at 214-15.

2. Facts Ascertained in Discovery and Analysis

Timothy Lee Hardy is a self-employed businessman, in Louisville, Kentucky. Hardy testified that for the past twenty years, he has been active as a "leader" in the Jefferson County Republican Party, advising and helping candidates to organize their campaigns. In 1990, Hardy made an unsuccessful bid for federal office for Kentucky's 3rd District.

Dr. Frank G. Simon, an allergist, is the founder, president and sole officer of the Freedom's Heritage Forum located in Louisville, Kentucky. The Forum, an organization promoting pro-life and other issues, had been in existence for ten to fifteen years as a state PAC before becoming a federal PAC on March 3, 1994. Dr. Simon runs the Forum from his home or office, directs Forum volunteers, and controls Forum finances. He is the only individual authorized to sign checks and make disbursements on behalf of the Forum and has been performing the underlying duties of treasurer for the Forum.

28044203605

The investigation revealed that Dr. Simon played an important role in recruiting Timothy Hardy to run in the 1994 Republican primary. Dr. Simon was clearly interested in finding a pro-life candidate to oppose Susan Stokes in the primary. It was Corley Everett, a Forum volunteer and longtime acquaintance of Dr. Simon, who called Timothy Hardy to persuade him to consider running in the 1994 primary.

In November 1993, Timothy Hardy was contacted by Stu Reikert, head of the Search Committee for the Jefferson County Republican Executive Committee, about running for the 37th Legislative District state representative position ("LD"). Members of this Search Committee also included Paul Cochran and Corley Everett. Hardy testified that he was interested in the 37th LD position but that he was concerned that Congresswoman Susan Stokes, the Republican pro-choice candidate, would run unopposed in Kentucky's 3d District 1994 primary race. Hardy testified that he spoke about his concerns to Reikert and to several individuals from pro-life organizations and supporters of the pro-life issue, including: Donna Shedd, Margie Montgomery, and Ken Geisler.

In late December 1993, Corley Everett telephoned Hardy several times to ask him to consider running in the congressional race instead of the 37th LD. Shortly thereafter, on or about January 4, 1994, before Hardy had declared his candidacy for the 1994 Republican primary, a small group of four or five individuals involved in the pro-life issue (including Donna Shedd, Corley Everett and Dr. Simon) attended a private evening meeting at "Shoney's" restaurant on Eastern Parkway, in Louisville, Kentucky. According to Dr. Simon, the purpose of the meeting was to hear Tim Hardy speak about his plans to run in the primary. Dr. Simon testified that he attended the meeting because he wanted to meet Hardy and to find out whether Hardy would run

28044203606

and how he stood on issues. Dr. Simon testified that this was the first time he had actually met Hardy though he knew of Hardy's pro-life stance and thought the Forum had probably endorsed Hardy in his 1990 primary race. Dr. Simon further testified that the meeting was in the form of a question and answer session and that Hardy answered questions about his background, reasons for wanting to run, including his pro-life stance and challenge of Stokes, and that Hardy discussed hurdles he would face if he decided to run -- family, job, and finances.

The information provided at this meeting conveyed to Dr. Simon that Hardy was serious about running, that Hardy's views were compatible with the Forum's and worthy of support, and that Hardy would need assistance with his campaign. In short, at this meeting, Hardy himself communicated to Dr. Simon his plans, projects, and needs with obviously an expectation of some type of support.

On January 5, 1994, Hardy rented office space from Eline Realty, operated by Corley Everett's godparents. This office, located on 4140 Shelbyville Road, at the corner of Shelbyville and Browns Lane in Louisville, is approximately 1.6 miles from (a 5-minute drive) and on a direct route to Dr. Simon's office at 1404 Browns Lane. The next day, on January 6, 1994, even before Hardy had declared his candidacy and set up a committee, Dr. Simon presented the Hardy campaign with its first contribution, a \$500 cashier's check. Dr. Simon initially testified that he did not remember making any contributions to the Hardy campaign or how this contribution came to be made, but later acknowledged that he was aware that Everett was working on Hardy's campaign and that Everett may have called him about making this contribution. For his part, Hardy testified that he did not know if he received any contributions from the Forum or Dr. Simon because Everett took care of these matters. Hardy Committee bank records, however,

28044203607

reflect that Hardy himself used Dr. Simon's \$500 contribution as an initial deposit to open the Hardy Committee's checking account on January 6, 1994. The following day, on January 7, 1994, both Hardy and Everett signed signature cards for the Hardy Committee account.

Hardy Committee records reflect that Hardy appointed a CPA named Bob Ross as campaign treasurer on January 10, 1994. Corley Everett testified that he did not previously know who Ross was, did not know how Hardy became acquainted with Ross, was not involved in selecting Ross as treasurer, and was in fact informed by Hardy that Ross would be treasurer. Hardy, on the other hand, testified that he did not know Ross and that Everett first came up with Ross's name and suggested him as treasurer. Ross testified that at the time he became treasurer for Hardy he knew Dr. Simon and that he later did some volunteer work (preparing Forum reports) for Dr. Simon and the Forum during the 1994 election. Ross further testified that he did not remember who referred him to Hardy but that Dr. Simon was the only person he could think that might have referred him to Hardy. Dr. Simon testified that he recalls someone, perhaps Corley Everett, telling him that Hardy needed a treasurer, and that he may have talked to Ross in January 1994 (after the meeting at Shoney's Restaurant) to ask him to serve as treasurer for Hardy. Thus, it appears that neither Hardy nor Everett knew Ross before the campaign and that Dr. Simon was responsible for lining up Ross, an accountant, to serve uncompensated as the Hardy campaign's treasurer.

Around January 8, 1994, Ross met with Hardy, agreed to become his treasurer and signed a signature card on the campaign checking account. Ross worked as treasurer for the Hardy Committee from about January 8, 1994, through November 2, 1994. Ross prepared the Hardy committee reports at his office from bank statements provided by Corley Everett.

28044203608

On or about January 12, 1994, Hardy declared his candidacy and filed his application as a 1994 Republican primary candidate with the Kentucky Election Registry. Shortly thereafter, he formally hired Everett as his campaign manager and Everett began gathering volunteers for Hardy's campaign. Some of the volunteers were individuals who had also volunteered for the Forum such as Ed Parker and Boyd Pendleton. Richard Lewis was also a volunteer and worked as the "issues" person. Everett became a paid employee of the Hardy for Congress campaign the last couple of months before the primary. Thus, within several weeks after Hardy had received initial calls from Everett and met Dr. Simon, Hardy had secured office space, begun receiving campaign contributions, opened a bank account, and filed for candidacy.

Hardy testified that he received a candidate survey (questionnaire) from the Forum which he completed and returned. Hardy claims, however, that at the time he received and completed the questionnaire neither he nor anyone else on his staff knew what the Forum was. Hardy also testified that among the questionnaires received, the Forum questionnaire was the only one to include a formal request for a photo. Hardy testified that he included a black and white (per the request) family photo with the questionnaire. Dr. Simon, on the other hand, testified that Forum questionnaires do not include requests for photos, though he did not deny that the photo may have come from the Hardy campaign and could not explain how the Forum obtained it. This discrepancy in the testimony suggest that neither Hardy nor Dr. Simon wanted to admit that they obtained the photo through coordination.

On February 10, 1994, Dr. Simon made an additional \$400.00 contribution, also by cashier's check, to the Hardy Committee. Dr. Simon testified that this contribution, like the earlier one he made to Hardy, may have been passed on to Corley Everett. Hardy

28044203609

Committee records reveal that during the period January 6 through February 10, 1994, the Hardy Committee received a total of five contributions totaling \$1,155, of which \$900 came from Dr. Simon's two contributions.

The investigation clearly shows that Dr. Simon was responsible for starting up Hardy's candidacy by providing early direct financial support and volunteers to the Hardy campaign. Shortly after the meeting at the restaurant and even before Hardy had declared his candidacy, Dr. Simon made the first contribution to Hardy's campaign which was probably given to Everett and which, in fact, Hardy used to open the Hardy Committee campaign bank account. Dr. Simon was also responsible for lining up Hardy with an accountant to serve uncompensated as treasurer. Moreover, Everett, who obviously remained in contact with Dr. Simon, became Hardy's campaign manager and the Hardy campaign included several volunteers who were or had also been volunteers for the Forum.

In the few weeks leading up to the primary, the Forum organized a strategy-planning event for Hardy, prepared and distributed various pro-Hardy flyers, and organized phone banks that advocated the election of Timothy Hardy.

The evidence revealed that on April 19, 1994, at a crucial time in the campaign, with the primary less than a month and a half away, Dr. Simon and the Forum organized and hosted an event focused on planning strategy for electing Hardy. In fact, all of the Forum's reported expenditures on behalf of the Hardy campaign were made after this event.

The event was held at a Louisville rental facility called "Swiss Hall." A copy of an invitation to the event, shows a signature of Dr. Simon and describes the event as an "appreciation banquet" for precinct coordinators, with Tim Hardy as the speaker, and where "We

28044203610

will plan strategy on how to get Tim Hardy elected." The printed program for the evening states that there would be a speech by "Tim Hardy, Candidate for Republican Nomination to Third District Congressional Seat"; and includes a "Sign up Sheet" for attendees to volunteer or make a contribution to the Forum. Approximately 200 people attended the event. Each attendee was provided with a tag reflecting name and precinct and directed to sit at tables by precinct. On an audiotape of the event, Dr. Simon is heard introducing Hardy, followed by Hardy's speech about his position on pro-life and other issues and Hardy's request for support in getting elected. Immediately after Hardy's speech, Dr. Simon is heard telling the audience "to move quickly to the offensive challenge" so as "to get Hardy elected as the next Congressman from Louisville," and asking people to divide into legislative precincts and that he will "explain what you can do to get Tim Hardy elected." Dr. Simon is further heard asking for volunteers to make telephone calls urging people in their respective precincts to vote for Hardy in the primary. Dr. Simon explained that he would first do a mailing of Hardy literature and then send phone scripts to volunteers for making follow-up calls to Republican voters to ask them if they received the Hardy mailing and to urge them to vote for Hardy. This Office subsequently obtained from Dr. Simon a copy of the letter and phone script which was sent to the volunteers. The letter, dated May 12, 1994, some three weeks later, refers to an enclosed Hardy tabloid which was sent to Republican voters and includes phone scripts for first and second calls urging support for Hardy.

After the event, the volunteers made calls and mailed or distributed a series of pro-Hardy flyers including tabloids, letters, and sample ballots. Dr. Simon testified that he estimated that about 50 volunteers made calls.

28044203611

Hardy's testimony, however, differed in several important respects with the evidence and is plainly false. First, Hardy testified that he was invited to a "spaghetti dinner" and that he was not sure what the purpose for the event was except to mingle around. Second, Hardy testified unequivocally that the invitation to the event specified that "no speeches" or "no stumping" would be allowed and that he in fact made no speeches. Hardy explained that there were three other candidates beside himself at the event, that all the candidates were seated at the same table and that Simon introduced each candidate, who in turn introduced themselves and their family. Third, Hardy testified that the event was set up to get out the vote for the state and legislative district level races only. Hardy explained that after the candidate introductions, Dr. Simon got up and spoke about the importance of getting out the votes, and encouraged people to volunteer to walk door to door, hand out flyers, and make phone calls. Hardy testified that he stayed after Dr. Simon's remarks and "walked around" but then left after awhile because the volunteers were busy organizing and did not have the time to talk. Finally, and most importantly, Hardy testified that he had not met, spoken with, and "didn't really know who [Simon] was," until he attended the event.

Though Hardy tried to portray the "Swiss Hall" event as merely a spaghetti dinner where candidates had the opportunity to mingle, the evidence shows that the focus and purpose for the event was to promote Hardy's candidacy.

First, the invitation to the event makes it clear the event was not at all a candidate forum but rather an event specifically organized to promote Hardy's candidacy. Though Hardy, Everett, and Dr. Simon testified that other candidates were present, neither the invitation nor the program describes the event as a "candidate night" or mentions other candidates being invited to

28044203612

attend and to speak. The invitation to the event clearly lists Timothy Hardy as the main speaker and states "We will plan strategy on how to get Tim Hardy elected." The printed program for the evening also lists a speech by Hardy identified as "Candidate for Republican Nomination to Third District Congressional Seat."

Second, the evidence contradicts Hardy's unequivocal testimony that he was specifically instructed that no speeches would be allowed and that he merely introduced his family but gave no speech. The evidence shows that Hardy actively participated in the event by making a speech and asking for support in getting elected. The invitation and program clearly list Hardy as a speaker and Hardy's speech is heard on the audiotape. Moreover, both Dr. Simon and Everett testified that Hardy gave a prepared speech and Dr. Simon stated that Hardy spoke on the issues during his presentation to the audience.

Third, the evidence contradicts Hardy's testimony that Dr. Simon organized the volunteers for state and local races only. In fact, Dr. Simon organized volunteers for the specific purpose of making phone calls and distributing literature promoting Hardy. Dr. Simon testified that he specifically endorsed the pro-life candidate who was Hardy and that he distributed phone lists instructing the volunteers to make calls promoting Hardy's candidacy. On the audiotape recording, Dr. Simon is heard discussing that the phone banks should focus solely on Hardy and that volunteers would receive subsequent mailings of the phone scripts for the Hardy calls. Though Dr. Simon testified that he was not sure whether Hardy was still at the event when he gave instructions on the phone banks and Hardy testified that he left before the event ended, the evidence shows that Hardy would have been present during Dr. Simon's instructions on the phone banks. Hardy testified that he heard Dr. Simon's remarks which followed the candidates'

28044203613

introduction and that he (Hardy) stayed for a while afterwards while the volunteers organized themselves by precinct. The same sequence of events is found on the audiotape, i.e., Dr. Simon's introduction of Hardy, followed by Hardy's speech, and immediately after Dr. Simon's organizing of volunteer for the phone banks. Thus, if Hardy was present for Dr. Simon's remarks, he had to have heard Dr. Simon's statements about getting him elected and the discussion about the phone banks. This, therefore, would make Hardy's statements that the event and phone banks were set up exclusively for state and local races patently false.

Fourth, Hardy's testimony regarding his knowledge of Dr. Simon is flatly inconsistent with the evidence and appears concocted to bolster Hardy's claim that neither he, Corley Everett, nor others on his campaign staff knew who Dr. Simon was prior to the "Swiss Hall" event. Hardy initially wrote the Commission specifically denying that he or anyone acting on his behalf ever had any direct contact or initiated any request for contributions or endorsements from Dr. Simon and the Forum. Later, in his deposition, Hardy made a series of unequivocal statements, progressively embellishing his account to bolster his position that he did not really know Simon until the event and to make it appear that no one on his staff including Everett seem to know who Simon was. Hardy first testified "I didn't know Frank Simon. I didn't know who he was until the campaign was maybe halfway over. I didn't know who this person was." Hardy also stated that he and his campaign staff saw Forum flyers promoting Hardy but that no one seem to know for sure "who was behind [the] Freedom's Heritage Forum," that he tried to find out, and that they thought it was the printer Nick Simon. Again later, Hardy stated for the first time that it was in fact the April 19, 1994, "Swiss Hall" event where he first met Dr. Simon stating: "I met him there. I had heard a little bit about him. I knew that he was a controversial figure with respect to

28044203614

the -- to his -- ideas and philosophy as it relates to politics. But I never had -- I had never met the guy. I had never talked to him, didn't really know who he was." Further along, Hardy testified that at the event he initially "could not identify Frank Simon" that he asked Everett "Which one is Frank Simon?" that Everett said he did not know and that he (Hardy) "had to ask someone else there to point Frank Simon out" Hardy also testified that the event was the first and only time he ever met Dr. Simon and that neither he nor anyone in his campaign communicated with the Forum. Finally, Hardy disavowed any knowledge that he had received contributions from Dr. Simon, expressing "complete surprise" when shown Dr. Simon's contribution checks.

The evidence, however, shows that Dr. Simon and Hardy knew and had interacted with each other well before the "Swiss Hall" event, starting with Dr. Simon and the Forum's involvement in the recruitment of Hardy with Corley Everett, the meeting at Shoney's, Dr. Simon's early direct financial contributions to the Hardy campaign and Hardy's use of Dr. Simon's contribution to open his campaign account, Dr. Simon's steering of volunteers to Hardy's campaign and use of Corley Everett as the go-between for Dr. Simon and Hardy.

Even assuming that Hardy had not seen the Forum invitation to the event, was unaware of what the Forum was planning, and did not know beforehand who Dr. Simon or the Forum was, Hardy's active participation at an event where he asked for support and where his candidacy was endorsed and volunteers organized to conduct phone banks and distribute literature promoting his candidacy would clearly constitute coordination between Hardy and the Forum and would taint any subsequent expenditures on behalf of Hardy. AO 1988-22.

Following the "Swiss Hall" event, the Forum put out four different types of flyers promoting Hardy's candidacy. The first, a newspaper-styled flyer entitled "The Loyal

28044203615

Republican" and dated "May, 1994 primary edition," shows on the front page a photo of Stokes with Steinem and an article attacking Stokes' pro-choice stance and Steinem's support of the Stokes campaign. There is also a photo of Hardy and his family (provided by Hardy) and an article entitled "Conservative Candidate Hardy: the "Real" Republican." The Hardy article states that "Hardy is a pro-life Catholic conservative who stands to garner votes from Democrat conservatives in the November general election." The back of the tabloid shows a chart entitled "Who is the real Republican" and compares Hardy's position on issues of importance to the Forum i.e., abortion, NAFTA, gun control, Health Care, and gays in the military, with those of Clinton and Stokes. Under the chart are quotes from the candidates.

The Forum's second Hardy flyer entitled "Explanation of Ballot" explains the Forum's criteria for selecting which candidates to endorse. The back of the tabloid, entitled "Pro-Family Sample Ballot" for the May 24 primary, expressly advocates the election of Hardy and other clearly identified candidates by showing a completed ballot with an arrow by the name of Hardy and the names of other candidates endorsed by the Forum.

The Forum's third Hardy flyer, in the form of a letter dated May 16, 1994, expressly advocates the election of Hardy and the defeat of Stokes by asking volunteers to contact the Forum to, among other things, make calls urging people to vote in the Republican primary to defeat Stokes and a handwritten note urging them to vote for Tim Hardy. The back of the tabloid contains the "Who's the Real Republican" chart comparing the views of Hardy, Stokes, and Clifton on various issues.

The Forum's fourth flyer is a reprint of a page from "The Letter," the Kentucky gay and lesbian newspaper, urging all gay and lesbian Republicans to vote for Stokes in the May 24

28044203616

primary. In its 1994 October Quarterly Report, the Forum reported this flyer as an expenditure made in opposition to Stokes.

Hardy testified that he found one of the flyers, possibly "The Loyal Republican," at his door and that he held a staff meeting to determine who had put it out. Hardy further testified that Everett told him that the Forum had put it out and that he (Hardy) was happy with the endorsement.

The Hardy Committee reports reflect that the Committee was low on funds in May 1994, right before the primary. It was during that time that Dr. Simon and the Forum put out tabloids endorsing Hardy as the Republican candidate in the primary. This continued up until the very week of the primary. The primary was held on May 24, 1994. Susan Stokes narrowly defeated Hardy.

Through direct meetings between Dr. Simon and Hardy, Dr. Simon was informed of Hardy's campaign ideas and needs. The initial meeting at the restaurant was a vehicle for Hardy to convey to Dr. Simon his campaign plans, ideas, and needs. Dr. Simon's initial financial contributions to and steering of volunteers to the Hardy Committee helped to get the Committee off the ground. The "Swiss Hall" event was specifically organized to plan strategy to get Hardy elected and Hardy actively participated in this by attending the meeting and asking for support. Consequently, the Forum's expenses for the Swiss Hall event and for the tabloids promoting Hardy would have to be viewed as coordinated because they were planned in cooperation and/or at the request of the candidate Tim Hardy.

In its 1994 July Quarterly Report, the Forum reported spending \$22,738.81 in total itemized "independent expenditures" for the Hardy flyers. The expenditures were reported on

28044203617

the Schedule E and cover the period May 4, 1994, through June 9, 1994. The Forum also reported spending \$778 (food and rental) for the Swiss Hall event. Thus, the total amount in contributions to Hardy equals \$23,561.81.

Finally, the knowing and willful standard requires knowledge that one is violating the law. In addition, an inference of a knowing and willful violation may be drawn from an "elaborate scheme for disguising" actions. Hardy has testified that he has over twenty years' experience as a leader in the local Republican party and advisor to candidates and had run for federal office once before. This suggests that he was knowledgeable about the law. Moreover, the evidence has shown that Hardy's statements made during the investigation e.g., his initial unequivocal denial of any direct contact with Dr. Simon and his testimony about the "Swiss Hall" event which the evidence has shown to be false, suggests a deliberate attempt to hide the true nature of his activities and an attempt to obstruct the investigation. Hardy's elaborate attempt to conceal his actions combined with his long-term experience as a political actor strongly suggest that Hardy must have known that his activities were unlawful at the time they were undertaken raising an inference that the violations were knowing and willful.

In light of the foregoing, the General Counsel's Office is prepared to recommend that the Commission find probable cause to believe that Timothy Hardy, in his individual capacity as a candidate, knowingly and willfully violated 2 U.S.C. § 441a(f) by accepting \$22,516.81 in excessive contributions from the Forum.

B. CORPORATE CONTRIBUTIONS

Pursuant to 2 U.S.C. § 441b(a), corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate

28044203618

for federal office. Section 441b(a) also makes it unlawful for any candidate, political committee, or other person knowingly to accept or receive a contribution prohibited by section 441b(a).

The Act broadly defines a contribution or expenditure by a corporation to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value" made to any candidate, campaign committee, or political party organization, in connection with any Federal election. 2 U.S.C. § 441b(b)(2). The term "anything of value" includes all in-kind contributions, such as goods and services offered free of charge or at less than the usual and normal charge. 11 C.F.R. § 100.7(a)(1)(iii)(A).

Postal Service records reveal that between March 1 and May 30, 1994, the Hardy Committee used bulk mailing permit number 771 to send out its mailings. This permit is issued to Toby Tours, Inc., d.b.a. Toby's Travel Club, Inc. ("Toby"), a Louisville, Kentucky business. The name "Jerry Toby" appears under the "Signature of Permit Holder or Agent" of the Statement of Mailing with Permit Imprints forms that were used for the Hardy mailings.

In his affidavit, Silas Ron Toby, president of Toby Tours, Inc., averred that either Hardy or someone from his staff requested permission to use Toby's permit to mail political literature and that they were granted permission. Mr. Toby further averred that the Hardy Committee did not provide any consideration to Toby for the use of the permit and that Hardy paid all the costs associated with the mailings. In his affidavit, Jerry Toby, son of Silas Ron Toby, and an employee of Toby Tours, Inc., averred that he knows Hardy and that he gave permission to the Hardy for Congress Campaign to use the bulk rate permit provided that there was no cost to Toby and Hardy paid all the costs associated with the mailing. Jerry Toby also averred that he did not know that his name was being used on the mailing forms.

28044203619

Although the Hardy Committee paid for most of the mailings,¹ it derived a financial benefit from the use of Toby's bulk mailing permit. As the chart below shows, the Hardy Committee saved a total of \$4,183.50 by using bulk mail instead of regular first class mail and by not paying the fees associated with obtaining a bulk mailing permit with imprint (annual \$85 fee (pro-rated) and the \$85 imprint fee):

HARDY FOR CONGRESS COMMITTEE MAILINGS

<u>Date</u>	<u>Pieces of Mail</u>	<u>Cost using Permit</u>	<u>Cost of 1st class mail</u>	<u>Annual Fee and one-time fee</u>	<u>Cost Difference (Contribution)</u>
3/14/94	786	\$ 116.33	\$ 251.52	\$ 7.08	\$ 135.19
3/14/94	462	\$ 68.38	\$ 147.84	\$ 85.00	\$ 79.46
3/15/94	221	\$ 32.71	\$ 70.72		\$ 38.01
3/17/94	1000	\$ 148.00	\$ 320.00		\$ 172.00
3/18/94	1050	\$ 155.40	\$ 336.00		\$ 180.60
3/21/94	536	\$ 79.33	\$ 171.52		\$ 92.19
3/21/94	806	\$ 119.29	\$ 257.92		\$ 138.63
4/6/94	1030	\$ 152.44	\$ 329.60	\$ 7.08	\$ 177.16
4/12/94	2063	\$ 305.40	\$ 660.16		\$ 354.76
4/18/94	479	\$ 74.82	\$ 153.28		\$ 78.46
5/9/94	3275	\$ 484.70	\$ 1,048.00	\$ 7.08	\$ 563.30
5/16/94	1381	\$ 204.39	\$ 441.92		\$ 237.53
5/18/94	909	\$ 134.53	\$ 290.88		\$ 156.35
5/20/94	9753	\$ 1,447.34	\$ 3,120.96		\$ 1,673.62
Totals:	23751	\$ 3,523.06	\$ 7,600.32	\$ 106.24	\$ 4,077.26

	<u>pro rata assessment of annual fees</u>	<u>\$ 106.24</u>
	<u>difference between regular mailing and print mailing</u>	<u>\$ 4,077.26</u>
Difference:	<u>total when adding pro rata assessment of annual fees</u>	<u>\$ 4,183.50</u>

Timothy Hardy through Jerry Toby was granted permission by Toby Tours to use Toby's postal permit to mail Hardy's campaign materials. Hardy's use of Toby's postal permit resulted

¹ Postal records reflect that the Hardy Committee's check in the amount of \$1,447.34 for the May 20, 1994, mailing was returned for insufficient funds and was never paid.

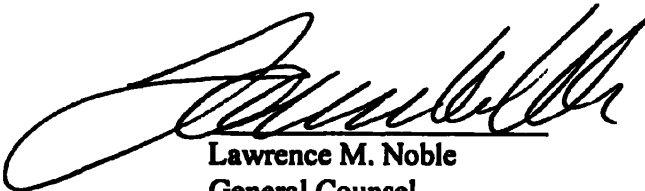
in \$4,183.50 in prohibited corporate in-kind contributions from Toby to Hardy. Accordingly, the General Counsel's Office is prepared to recommend that the Commission find probable cause to believe that Timothy Hardy violated 2 U.S.C. § 441b by knowingly accepting corporate contributions.

III. RECOMMENDATIONS

1. Find probable cause to believe that Timothy Hardy knowingly and willfully violated 2 U.S.C. § 441a(f).
2. Find probable cause to believe that Timothy Hardy violated 2 U.S.C. § 441b.

Date

10/2/97



Lawrence M. Noble
General Counsel

28044203621